STATE OF MICHIGAN

COURT OF APPEALS

ELM PLATING COMPANY, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED June 19, 2003
v	No. 238446 Jackson Circuit Court
J MARK SYSTEMS, INC., Defendant/Counterplaintiff-Appellant.	LC No. 01-000213-CK

ELM PLATING COMPANY, Plaintiff/Counterdefendant-Appellant,	
v	No. 239590 Jackson Circuit Court
J MARK SYSTEMS, INC., Defendant/Counterplaintiff-Appellee.	LC No. 01-000213-CK

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right a judgment awarding damages to plaintiff, and plaintiff appeals as of right an order denying reconsideration of an award of attorney fees and interest. We affirm in part and reverse in part.

Defendant's first issue on appeal is that the trial court erred in ignoring plaintiff's failure to fulfill the contract's conditions precedent. We disagree. Whether contract language is ambiguous is a question reviewed de novo. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002). If contract language is unambiguous, its meaning is a question of law and is also reviewed de novo. *Brucker v McKinlay Transport, Inc*, 225 Mich App 442, 448; 571 NW2d 549 (1997). "Where the contractual language is unclear or susceptible to multiple meanings, interpretation is a question of fact" reviewed for clear error. *Id*. "This Court

reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

"A 'condition precedent' is a condition that must be met by one party before the other party is obligated to perform . . . ." *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 411; 646 NW2d 170 (2002).

> A "condition precedent" is a fact or event that the parties intend must take place before there is a right to performance. A condition precedent is distinguished from a promise in that it creates no right or duty in itself, but is merely a limiting or modifying factor. Courts are not inclined to construe stipulations of a contract as conditions precedent unless compelled by the language in the contract. [*Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 350; 605 NW2d 360 (1999), citing *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993) (citations omitted).]

The contract provisions cited by defendant are not conditions precedent. The contract did not specifically state that there was *no* obligation on defendant's part unless the waste treatment system was properly installed and operated. See *Knox v Knox*, 337 Mich 109, 116-118; 59 NW2d 108 (1953). Additionally, even if the provisions are ambiguous, a provision is not construed as a condition precedent unless plainly expressed, *MacDonald v Perry*, 342 Mich 578, 586; 70 NW2d 721 (1955), and an ambiguously worded contract should be construed against the drafter, which was defendant. See *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 499; 628 NW2d 491 (2001). Therefore, the provisions in the contract are not conditions precedent.

Defendant's second issue on appeal is that the trial court erred because it did not consider causation. We disagree. "The essence of a warranty action under the UCC [Uniform Commercial Code] is that the product was not of the quality expected by the buyer or promised by the seller." *Niebarger v Universal Coops, Inc*, 439 Mich 512, 531; 486 NW2d 612 (1992). A plaintiff cannot recover without showing fault. *MASB-SEG Prop/Cas Pool, Inc v Metalux and Medler Electric Co*, 231 Mich App 393, 399; 586 NW2d 549 (1998). In this case, the trial court heard testimony throughout the trial that related to causation, and it repeatedly referenced the cause of the waste treatment system's failure in its opinion. The trial court did not disregard causation in deciding this matter, and sufficient evidence was presented from which the trial court properly determined defendant was the cause of the waste treatment system's failure. See MCR 2.613(C).

In its third issue on appeal, plaintiff argues that prejudgment interest was improperly denied. We agree. Questions of law regarding statutory interpretation are reviewed de novo. *Nelson v Grays*, 209 Mich App 661, 664; 531 NW2d 826 (1995). Whether to award prejudgment interest pursuant to MCL 600.6013 is also reviewed de novo. *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 623-624; 550 NW2d 580 (1996).

MCL 600.6013 "entitles a prevailing party in a civil action to prejudgment interest from the date the complaint was filed to the entry of judgment." *Beach*, *supra* at 624. "Moreover, an award of interest is mandatory in all cases to which the statute applies." *Everett v Nickola*, 234

Mich App 632, 639; 599 NW2d 732 (1999). Interest on a money judgment is calculated on the entire amount, including attorney fees and costs, from the date of the filing of the complaint. *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 644; 552 NW2d 671 (1996). Plaintiff's first amended complaint sought a money judgment; thus, MCL 600.6013 applied and interest should have been calculated from May 17, 2001, the date the complaint was filed. The trial court erred in not awarding interest from the date of the complaint; therefore, this determination of the trial court is reversed and remanded.

Plaintiff contends in the fourth issue on appeal that the trial court abused its discretion when it did not award plaintiff attorney fees. We disagree. An award of attorney fees as an element of damages incurred as a breach of warranty is within the trial court's discretion and is reviewed for an abuse of discretion. *Kelynack v Yamaha Motor Corp, USA*, 152 Mich App 105, 114; 394 NW2d 17 (1986).

Generally, attorney fees are not recoverable unless expressly allowed by statute, court rule, or common-law exception. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 474; 521 NW2d 831 (1994). Exceptions are narrowly construed. *Burnside v State Farm Fire & Cas Co*, 208 Mich App 422, 427; 528 NW2d 749 (1995). MCL 440.2714 allows incidental and consequential damages for a breach of warranty. See also MCL 440.2715. In *Cady v Dick Loehr's, Inc*, 100 Mich App 543, 548-549; 299 NW2d 69 (1980), we held that attorney fees can be awarded as incidental damages under MCL 440.2714. Further, in *Kelynack, supra* at 114-116, we held that a trial court did not abuse its discretion when it awarded attorney fees as consequential damages.

A trial court's findings of fact are sufficient if "it appears that the trial court was aware of the issues in the case and correctly applied the law . . . ." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The interim judge in this case did not abuse his discretion when he denied attorney fees to plaintiff. The trial court was aware of the issues in the case and the law, and consulted with the judge who presided over the trial. The denial of attorney fees was based on the parties' conduct and an understanding that the UCC does not *guarantee* attorney fees to the prevailing party in every case. While another judge may have handled the matter differently, this does not mean that the determination was an abuse of discretion. See *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Finally, plaintiff argues in the fifth issue on appeal that the trial court improperly denied reconsideration of this case. We disagree. A trial court's decision to deny a motion for reconsideration is reviewed for abuse of discretion. *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997).

Plaintiff brought its motion for attorney fees under MCR 7.208(I). According to MCR 2.119(F)(1), a motion for reconsideration must be served and filed within fourteen days after entry of an order disposing of the motion being reconsidered unless another rule provides a difference procedure; for example, MCR 2.604(A). However, MCR 2.604(A) is not applicable to the facts in this case because the court rule applies to a court's ability to revise an order and the party's right to file an appeal. Therefore, because plaintiff's reconsideration motion was filed after the fourteen-day time period cited in MCR 2.119(F)(1), the motion was properly denied. Additionally, a motion for reconsideration that merely presents the same issues ruled on by the court will not be granted. MCR 2.119(F)(3). The party moving for reconsideration "must demonstrate a palpable error by which the court and the parties have been misled and show that a

different disposition of the motion must result from correction of the error." *Id*. Plaintiff's motion for reconsideration merely reiterated the arguments made in court. Further, plaintiff did not demonstrate that a palpable error was made that misled the court. Therefore, the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration.

Affirmed in part, and reversed and remanded in part. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell